

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 23 October 1979

DIETITIANS AMENDMENT BILL

Proposed Amendments

Hon. Mr GAIR, in Committee, to move the following amendments:

To insert, after clause 1 on page 1, the following clause:

1A. **Interpretation**—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “Minister”, the following definition:

“Penal Cases Committee” means the committee of that name appointed under section 8A of this Act.”

To insert after clause 3, on page 4, the following clause:

3A. **Penal Cases Committee**—The principal Act is hereby amended by inserting, after section 8, the following section:

“8A. (1) There shall be a committee of the Board to be known as the Penal Cases Committee, which shall have the functions and powers imposed or conferred on that Committee by this Act, and which shall consist of 3 members of the Board, of whom at least 2 shall be dietitians.

“(2) The members of the Penal Cases Committee shall be appointed by and hold office at the pleasure of the Board.

“(3) The Board shall nominate one of the members of the Penal Cases Committee to be the convener.

“(4) If, in relation to any particular complaint, the Chairman is satisfied that it would be impracticable, inappropriate, or unduly inconvenient for a member of the Penal Cases Committee to serve on the Committee for the purpose of investigating that complaint, he may, subject to subsection (1) of this section,—

“(a) Appoint some other person who is a member of the Board to serve on the Committee in the place of that member for that purpose; and

“(b) If the member replaced is the convener of the Committee, nominate any other member of the Committee (including a member appointed under paragraph (a) of this subsection) to be the convener in his place—

and any person so appointed or nominated shall, while he is so acting, be deemed to be a member of the Committee or to be the convener of the Committee, as the case may require.

“(5) Subject to the provisions of this Act, the Board may from time to time make rules regulating the procedure of the Penal Cases Committee, and prescribing classes of cases that need not be referred to that Committee before they are considered by the Board.

“(6) Subject to the provisions of this Act, in the absence of any such rules, or so far as the rules do not extend, the Penal Cases Committee may regulate its procedure as it thinks fit.”

Clause 10: To insert in clause 10, before the proposed section 25 on page 7, the following new sections:

“25. **Complaints against dietitians**—(1) Except as otherwise provided by rules made under section 8A of this Act, every person who seeks to complain to the Board of the conduct of any dietitian shall make the complaint to the Registrar.

“(2) Every such complaint (other than a complaint made by a Court) shall be in writing.

“(3) When the Registrar has received any complaint under this section, he shall notify the convener of the Penal Cases Committee of the complaint; and the convener may require that the complaint be supported by such statutory declarations as he may require, or decide that the matter need not proceed further, or forthwith proceed in accordance with section 25A of this Act.

“(4) If the convener decides that the matter need not proceed further, he shall report the substance of the complaint and the reasons for his decision to the other members of the Penal Cases Committee.

“(5) Without limiting the provisions of subsection (1) of this section, a complaint may be made under this section by any person in the service of the Crown acting in his official capacity.

“25A. **Penal Cases Committee to investigate complaints**—(1) Except where the convener of the Penal Cases Committee decides that the matter need not proceed further, the convener shall, upon being notified of the complaint in accordance with section 25 of this Act, and having received any statutory declarations that he may require, cause the Penal Cases Committee to investigate the complaint and determine whether or not any further action shall be taken in respect of it.

“(2) Before the Penal Cases Committee decides whether or not further action shall be taken in respect of the complaint,—

“(a) The convener shall post or deliver to the dietitian concerned a notice specifying the substance of the complaint with sufficient particularity to enable that dietitian to answer it and inviting him, within such period (being not less than 14 days) as may be specified in the notice, to give the convener any written explanation he may wish to offer and to advise the convener if he wishes to be heard by the Committee; and

“(b) The Penal Cases Committee shall allow the time specified in the notice to elapse, and shall give the dietitian concerned reasonable opportunity to be heard, either personally or by counsel or otherwise, and shall give due consideration to any explanation made.

“(3) Where at the conclusion of any such investigation the majority of the Penal Cases Committee considers that further inquiry should be made by the Board in relation to the subject-matter of the complaint, the Committee shall frame an appropriate charge and refer it to the Chairman of the Board who shall thereupon convene a meeting of the Board for the purpose of hearing the charge.

“(4) Every charge that is referred to the Chairman of the Board pursuant to subsection (3) of this section shall be prosecuted at the hearing by the Penal Cases Committee, and the Committee and the dietitian against whom the charge has been made may for that purpose be represented by counsel or otherwise.

“(5) No member of the Penal Cases Committee shall act as a member of the Board or of any other committee of the Board at the hearing of, or deliberation and adjudication on, any charge arising out of a complaint that has been referred to the Penal Cases Committee under this section.

“(6) Notwithstanding anything in subsections (1) to (5) of this section, if any member of the Penal Cases Committee has reason to believe that a dietitian might have been guilty of professional misconduct, the Committee may investigate the matter of its own motion, without any complaint under section 25 of this Act having been made, and subsections (2) to (5) of this section shall apply in any such case with any modifications that may be necessary.”

To renumber the proposed new section 25, on page 7, as section 25B.

To insert in that proposed new section, after subsection (2), the following proposed subsection:

“(2A) The Board may, by writing under the hand of the Chairman, order any such dietitian to pay any costs and expenses of and incidental to the inquiry by the Board and any investigation made by the Penal Cases Committee.

To omit subsection (7) from that proposed new section, and substitute the following proposed subsection:

“(7) Every fine imposed, and all costs and expenses payable, under this section shall be recoverable as a debt due to the Crown.

To renumber the proposed new section 25A, on page 8, as section 25c.

To insert in line 24 on page 8, after the word “under”, the words “section 25B of this Act or”.

To insert in line 26 on page 8, after the words “person concerned”, the words “a notice containing a copy of the charge framed by the Penal Cases Committee, or, if there is no such charge,”.

To omit from line 28 on page 8 the expression “section 25”, and substitute the expression “section 25B”.

To omit from line 38 on page 8 the expression “section 25”, and substitute the expression “section 25B”.

To omit from line 40 on page 8 the word “not”, and substitute the word “only”.

To omit from line 41 on page 8 the words “, except by leave of the Board granted”.

To omit from line 4 on page 9 the expression “section 25”, and substitute the expression “section 25B”.

To insert on page 9, after the proposed subsection (3), the following subsection:

“(3A) Subsections (6) to (10) of this section and sections 25D and 25E of this Act shall apply in respect of any proceedings before a committee under subsection (3) of this section as if they were proceedings before the Board, and for that purpose the committee shall have the powers conferred on the Board by sections 25D and 25E of this Act.

To insert on page 10, after the proposed new section 25c (as so renumbered), the following proposed sections:

25d. Board and Committee to have certain powers of Commission of Inquiry—The Board and Penal Cases Committee shall, for the purposes of any inquiry or investigation under section 25B or section 25c of this Act, have the same powers as are conferred on Commissions of Inquiry by section 4 of the Commissions of Inquiry Act 1908.

25E. Appointment of legal assessor—With the consent of the Minister, the Board may, for the purposes of advising the Board or the Penal Cases Committee on questions of law or procedure arising in proceedings under sections 25 to 25c of this Act, appoint an assessor, who shall be a barrister or solicitor, to attend the proceedings.

To insert in line 23 on page 10, after the word “with”, the words “the whole or any part of”.

To omit from line 29 on page 10 the expression “section 25 (3) (b)”, and substitute the expression “section 25c (3) (b)”.

To insert in line 34 on page 10, after the word “Registrar”, the words “(or within such further time as the Supreme Court may allow on application made before or after the expiration of those 28 days)”.

To insert in line 42 on page 10, after the words “Supreme Court”, the words “on the basis of the transcript of the evidence adduced and any exhibits produced before the Board, which shall transmit such evidence and exhibits to the Registrar of the Court for this purpose”.

To insert in line 3 on page 11, after the word “Board” in the first place where it appears, the words “or may refer the matter back to the Board in accordance with the rules of the Court”.

To omit from line 4 on page 11 the expression “section 25 or section 25A”, and substitute the expression “section 25B or section 25c”.

To omit from lines 15 to 19 on page 11 the words “, and in any such case the costs so awarded may be recovered in any Court of competent jurisdiction as a debt due by the party against whom they had been awarded to the party in whose favour they have been awarded”.

EXPLANATORY NOTE

These amendments implement recommendations of the Public and Administrative Law Reform Committee and the New Zealand Law Society.